

6490

J. Cohen PL. I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: 3-188749

DATE: May 23, 1978

MATTER OF: American Chain & Cable Company, Inc.

DIRECT:

Pursuant to GAO decision, contracting agency reexamined and affirmed minimum needs in RFP in light of protester's alternate proposals submitted in best and final offer which had been rejected. Present protest based upon disagreement with agency's determinations is denied since such matters are responsibility of contracting agency, protester has not shown that agency acted arbitrarily, and agency did not have to provide opportunity to refine and revise alternate proposals by reopening negotiations.

In American Chain & Cable Company, Inc., B-188749, August 13, 1977, 7/-2 CPD 129, we considered a protest by American Chain & Cable Company, Inc. (Acco), against the refusal by the Library of Congress (Library) to consider two alternate proposals submitted by Acco with its best and final offer under request for proposals (RFP) No. 75-19.

The solicitation involved the design, fabrication and installation of compact bookstacks to be used in the Library's Law Library and Music Division. Amendment 6 to the RFP required as a safety feature two sensor devices for each aisle between bookstacks, "to detect the entrance of a person into an open aisle after the reset buttons have been pushed * * *."

Acco and Reflector Hardware Corporation (Reflector) submitted proposals. Negotiations were held, and best and final offers were requested. In alternate "A," Acco proposed to reduce the number of sensor devices to two per module of bookstacks by locating one at each end of a module to scan across all the bookstacks. Alternate "B" required no sensor devices, but depended instead upon visual inspection

D-188749

of an aisle. Although Acco's base proposal was not low, Acco contended that under either alternate it was the low offeror.

The Library treated alternates "A" and "B" as late proposals, contending that they should have been submitted prior to the submission of best and final offers. Acco protested, and we disagreed with the Library on the basis that the RFP, which encouraged alternate approaches, did not require submission before best and final offers were due. We therefore recommended that Acco's alternate proposals be evaluated in order to ascertain whether they were technically acceptable. We stated:

* * * * Should the outcome of such a determination be in the affirmative, negotiations should be reopened so that both firms will have the opportunity to submit offers based on the same requirements. We make this recommendation because if Acco's alternates are acceptable, it would appear that amendment 6 overstated the minimum needs of the Library in that the number of sensor devices necessary would be much lower than the number specified therein. * * *

We noted that the contracting officer had admitted that the use of fewer sensing devices than specified might achieve "the same degree of efficiency and functioning."

Pursuant to our August 19 decision, the Library undertook a technical evaluation of Acco's alternate proposals. During the evaluation, Acco asked that we clarify whether, if either of its alternates were found technically acceptable, it would have the opportunity to revise its price therefor. Acco also requested "that responsibility

B-188749

for award of this RFP be transferred from the present Contracting Officer as his apparent prejudices preclude Acco from receiving equitable treatment on this matter."

Acco's alternate proposals were found unacceptable by the Library. The Library's position was set out in a letter to Acco as follows:

"OPTION A

* * * * *

"The Technical Evaluation Committee recognized the claimed advantage of this alternate in reducing the number of sensing devices in the system, but the Committee felt that other considerations involved with the operation of the total system more than justified rejecting this alternate in favor of the detection system originally specified. In preparing the amendment to the RFI the Library had desired an added safety feature that would provide protection with a high degree of reliability but with few or no added frustrations to the users of an already complex system. The system specified by the Library is still considered to meet these criteria, whereas Alternate A proposed does not to the same degree.

"The principal objection is that the detectors proposed by ACCO would be mounted externally to the bookstacks and as such would be susceptible to accidental interruption. The light beam being external to the ends of the ranges could be interrupted

B-128749

by the motion of staff or booktrucks in the aisles between modules, especially since these aisles are only 48 inches wide and must allow for the passage of both staff and booktrucks. In addition, it is quite likely that booktrucks would be left in these aisles for varying periods of time while staff shelved or retrieved books from the stack ranges. The accidental interruption of the external light beam would stop all action of the system and require its resetting, thus adding to the operational time and to the frustration of the users. This interruption could occur on either side of the module and might not be witnessed by the primary user of the system, adding further to his time and frustration.

"The foregoing objection is considered by the committee serious enough to reject Option A in its entirety; however, there are other potential weaknesses which would have had to be considered if the primary objection was non-existent.

"1. The external location of the detection system would increase the danger of accidental damage or tampering. As the compact bookstack system is designed, the ends of the ranges are generally free of obstructions, in recognition of the narrowness of the passing aisles. To be most useful the detectors should be mounted low enough to detect entry into an aisle of either a person or a booktruck--a height that puts the detector head within range of accidental

B-188749

damage from booktrucks. Considering the relatively small space for maneuvering trucks, the chance of damage is great.

"2. Although these external detectors are to be mounted on columns or on fixed (non-movable) ranges, there still may be the possibility of some motion in the ends of the fixed ranges from the operation of the system. The long span for the beam (20 or more feet) may create a problem of alignment * * *.

"OPTION B

* * * * *

"This operating procedure is not considered acceptable to the users of the system. Were it acceptable, it could be accomplished far more simply than you proposed. All that would be needed would be to use spring-loaded switches on the reset buttons requiring them to be held until the aisle closed. These were considered during the drafting of original specifications for the compact bookstacks and were rejected for their impracticality under normal operating conditions. Your second alternate, furthermore, still does not meet the problem of unobserved entry after the user has pressed the reset buttons and has moved away from the aisle that is closing. Only an entry detection system satisfies this requirement with the desired degree of certainty and minimal alteration from the user."

B-188749

Acco has filed a protest in our Office against the rejection of its alternate proposals. Regarding alternate "A," Acco argues that the low external mountings were presented in conceptual, not design, diagrams and would have been refined during discussions; that since the RFP allowed the control cabinets to protrude into the aisles, protrusion of the sensor devices was by implication not prohibited; and that a system with the limited number of sensors proposed by Acco would be less susceptible to failure and alignment problems than a system with the number of sensors specified in the RFP. In regard to reliability, Acco has offered calculations to show that based on the frequency of use, the degree of failure of its system because of interruption, damage or other reasons is minimal. Acco also contends that the Library does not fully understand and appreciate the advantages of Acco's alternate proposal "A" and that any perceived problems with it actually reflect weaknesses in the RFP base system.

Concerning alternate "B," in its protest Acco has basically only described its operation for our consideration.

Acco requests that we independently evaluate the technical aspects of its alternate proposals, suggesting that the contracting officer may have been biased against Acco.

In response to the protest, the Library has reiterated its position that neither of Acco's alternates will adequately meet the Library's needs, particularly regarding accidental interruption and damage. The Library also states that the allowable protrusion of the control cabinets is not relevant to the sensor devices, since the control cabinets are not activated by movement in the aisles, and because of their positions and design cannot be accidentally damaged. In addition, the Library has submitted a report from an independent engineering firm indicating that Acco's alternate "A" would not be more reliable than the base system.

B-188749

As indicated above, we recommended that the Library conduct a technical evaluation of Acco's alternate proposals to determine their acceptability in the context of meeting that agency's minimum needs. We based our recommendation on the fact that absent such evaluation, we could not consider the Library's statement of its minimum needs to be the product of an informed and critical judgment. The Library has complied with our recommendation and has found the alternates unacceptable.

The determination of an agency's minimum needs is a function of that agency, which is accorded a reasonable range of judgment and discretion. Baden & Co., B-190386, December 21, 1977, 77-2 CPD 493. Our examination of that issue is limited to considering whether the agency's evaluations and conclusions are arbitrary. Baden & Co., supra; Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232. Moreover, it is not our function to independently evaluate proposals; the determination of the relative merits of technical proposals is also the responsibility of the procuring activity concerned, and that determination will ordinarily be accepted by our Office unless it is clearly shown to be arbitrary or in violation of procurement statutes or regulations. See Gloria G. Harris, B-188201, April 12, 1977, 77-1 CPD 255.

The protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.,--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. We have examined the submissions by Acco and the Library, including the reliability calculations. We believe that Acco has not shown that the determination that Acco's alternate proposals were unacceptable was unreasonable or arbitrary. In view of this, we cannot say that the Library's minimum needs were overstated. With respect to alternate "B," Acco has not responded to the Library's concerns. Alternate "A" may be as reliable as the Library's base system in regard to predicted rate of sensor failure. However, we do not believe that

B-188749

Acco has shown that the Library's concern with accidental interruption or damage was unfounded in regard to Acco's alternate "A" proposal. In this connection, there is no evidence in the record to support Acco's allegation of bias in the evaluation process.

In fact, we believe that the protest has disclosed justification for the Library's position on that issue. Acco had argued:

" * * * the average module will move 2.6 times per day. The time cycle for the module movement is 30 seconds per cycle. The average sensor will be active 78 seconds per day (30 seconds times 2.6) or 1.3 minutes per day.

"Based on an average of two pickers making 15 trips each day and walking the length of a module of 20 feet at 2 feet per second the sensors would be subject to interruption 2.5 minutes per day. Based on the sensors being active 1.3 minutes per day and the sensors subject to interruption 2.5 minutes per day the probability of the beam being interrupted by pickers is infinitesimal."

The Library has pointed out that even accepting Acco's base calculations, one must also consider that there will be an average of two parked book-trucks per aisle, which each of the two pickers would pass 30 times per day. On that basis, the Library states:

" * * * This means there would be 60 occasions each day when a parked book truck could be accidentally pushed into a position which would cause a system interruption--if indeed the system were not already


B-188749

shut down due to the resting place
of the parked booktrucks."

In sum, Acco's protest is essentially based upon its disagreement with the Library's judgment, which we do not believe has been shown improper. The mere fact that Acco does not agree does not invalidate the Library's position. See Hansa Engineering Corporation, B-187675, June 13, 1977, 77-1 CPD 423.

Further, in view of the above discussion and because Acco's alternate proposals, submitted with its best and final offer, were found technically unacceptable, negotiations did not have to be reopened merely to afford Acco an opportunity to revise or refine them. See Environmental Science and Engineering, Inc., B-189172, December 15, 1977, 77-2 CPD 465. In this connection, an offeror runs the risk of the rejection of its best and final offer if it fails to clearly demonstrate its merits. See Analysis and Computer Systems, Inc., B-188767, January 31, 1978, 78-1 CPD 75.

The protest is denied.


Acting Comptroller General
of the United States